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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,623	01/25/2001	Paul Summer	198462US23	5737

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ALEXANDRIA, VA 22314

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/16/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 2/4/03
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-37, 58-67 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-37, 58-67 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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Receipt is acknowledged of EOT and amendment of 2/4/03 respectively.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

– Claims 12, 25, 37 and 67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejection of record is maintained, regarding: "water absorbers" are not so specified in the specification, so far as examiner can determine, nor in the AAFCO document-please insert those ingredients in the claims, to overcome this rejection, or re name, if supported, in accord with AAFCO designations. The other terms are accepted as argued by applicant as identified by AAFCO.

Claims 1-4, 6-17, 19-29, 31-39, 41-49 and 51-57 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49, 51-57 of copending Application No. 09/ 950,687. Although the conflicting claims are not identical, they are not patentably distinct from each other because the rejection of record is maintained.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-37, 58-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris-5972414 in view of Hamada et al 3686392, Schroeder et al 4160041 and Vinci et al 5382678.

The rejection of record is maintained.

Harris coats whole cotton seed for animal feed use, at the instant PH, but does not specifically identify phosphoric acid, either as PH adjuster (col.4) or as one of the added minerals. Harris ends with a dry, coated solid, inclusive of the instant liquid feed products (col.3, lines 30-38 or with other sugar sources(lines 42,43). Glutamic acid solubles is not specified.

Schroeder provides (col.4) the phosphates, with (col.5 )metal compound capable of interacting. Schroeder does not specify whole cotton seed as the protein source; rather, cottonseed meal, or area (col.7), but Schroeder does show incorporation of protein sources includes use of particulates (pellets), coating, constituting mixing of ingredients, followed by solidifying, exothermic reaction (col.9, line 13-col.10, line 25) and storing, constituting the instant curing. Sugar sources are shown as from molasses, whey (col.3). The mixing of seeds rather than meal, in the supplement of Schroeder, or the coating of Schroeder's metal and phosphate materials with a sugar, onto the Harris seeds, would have been an obvious variation of Harris or Schroeder;

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likewise with Hamada and Vinci; Harris shows decided use advantages, for ruminants of the whole seeds-reduction in processing and cost, so that constitutes motivation to use the seed, not the meal, in any of the supplement preparations as disclosed by the cited prior art, to produce coated cotton seed products.

It has <sup>not</sup> clearly been established by objective showing of some additional unusual and/or unexpected results that the administration of the particular form of active, carrier or the amounts provides any greater level of prior art expectation as claimed. Further, no criticality as to the amount or ratio of adjuvant agent, has been shown by applicant.

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

Applicant's arguments filed 2/4/03 have been fully considered but they are not persuasive. Applicants arguments are that references do not disclose intact seeds- Harris does, however, <sup>to</sup> as the other references, applicants' invention as it is claimed, is obvious over the prior art, as no criticality has been shown (1) of whole cottonseed over the meal, while Harris discloses advantages of whole seed use (2) of the particular carrier-the prior art discloses equivalency of these ingredients as nutrient sources, while applicant shows them to be well known feed additives, (3) of the phosphate form, (4) of the mineral, vitamin, antibiotic and enzyme additives. Applicant has utilized open claim language, with no ratio or amount of specific carrier, metal and phosphate to provide ruminant feed supplements.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.



Levy/tgd  
May 13, 2003

NEIL S. LEVY  
PRIMARY EXAMINER